

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BAKER EDMAN CLARK,
Petitioner,

v.

CEDRIC TAYLOR,
Respondent.

1:16-cv-00180-WSD

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Catherine M. Salinas’s Final Report and Recommendation [7] (“R&R”). The R&R recommends the Court deny Petitioner Baker Edman Clark’s (“Petitioner”) 28 U.S.C. § 2254 habeas corpus petition [1], construed as his Writ of Mandamus. Also before the Court is Petitioner’s “Motion to Dismiss the Objection Part of Petitioner’s Response to Magistrate’s Order Directing the Petitioner to Consolidate his two Petitions for Writ of Habeas Corpus” [9] (“Motion to Dismiss Objection”).

I. BACKGROUND

In 2016, Petitioner, who is confined in state prison, submitted two “Petitions for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254.” Based on these petitions, the Clerk of Court opened this case and Case No. 1:16-cv-192. On

April 19, 2016, the Magistrate Judge issued an order [4] (“Show Cause Order”) in this case requiring Petitioner “to file an Amended Petition that sets forth all his claims in a single document and to [show cause]” why Case No. 1:16-cv-192 should not be administratively closed as duplicative of this case. (Show Cause Order at 1-2).

On May 10, 2016, Petitioner filed his “Response and Objection” [6] to the Show Cause Order, stating that he does not intend to attack his state court convictions in this case, but rather seeks to obtain an order directing a state court to “amend and correct” a transcript of its proceedings. ([6] at 2 (“[T]his petition is based on a post-conviction motion to amend and correct the trial court’s transcript and has nothing to do with petitioner’s convictions or sentences.”)).

On February 16, 2017, the Magistrate Judge issued her R&R. In light of Petitioner’s representation that he seeks to amend and correct a transcript of a state court proceeding, the Magistrate Judge ordered the Clerk to recategorize this action as one seeking a writ of mandamus pursuant to 28 U.S.C. § 1651. The Magistrate Judge determined that Petitioner is not entitled to mandamus relief, and recommends the Court dismiss this action.

On February 23, 2017, Petitioner filed his Motion to Dismiss Objection, seeking to strike the “Objection” portion of his response to the Magistrate Judge’s

Show Cause Order. Petitioner does not appear to object to the R&R. The same day, Petitioner filed his brief in support of his petition for a writ of habeas corpus, in which he presents several attacks on his state court conviction. It is evident that Petitioner intended to file this document in Case No. 1:16-cv-192.

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam). A district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). Where, as here, no party has objected to the report and recommendation, the Court conducts only a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983) (per curiam).

B. Analysis

The Magistrate Judge determined that Petitioner is not entitled to mandamus relief under 28 U.S.C. § 1651. The Court agrees. "[A] federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial

officers in the performance of their duties.” Moye v. Clerk, DeKalb Cty. Sup. Ct., 474 F.2d 1275, 1276 (5th Cir. 1973). Because Petitioner is not entitled to mandamus relief, the Magistrate Judge recommends the Court dismiss this action. The Court finds no plain error in the Magistrate Judge’s findings and recommendation, and this action is dismissed.¹

III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Catherine M. Salinas’s Final Report and Recommendation [7] is **ADOPTED**.

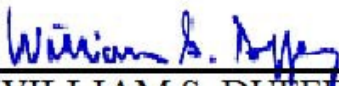
IT IS FURTHER ORDERED that this action is **DISMISSED**.

IT IS FURTHER ORDERED that Petitioner’s “Motion to Dismiss the Objection Part of Petitioner’s Response to Magistrate’s Order Directing the Petitioner to Consolidate his two Petitions for Writ of Habeas Corpus” [9] is **DENIED AS MOOT**.

¹ Because the Court dismisses this action, Petitioner’s Motion to Dismiss Objection is denied as moot. Because it is evident Petitioner intended to file his brief in support of his petition for habeas corpus in Case No. 1:16-cv-192, the Court directs the Clerk to transfer the brief [10] from the docket in this case to the docket in Case No. 1:16-cv-192.

IT IS FURTHER ORDERED that the Clerk of Court is **DIRECTED** to transfer Petitioner's Brief in Support of Petition for Writ of Habeas Corpus [10] from the docket in this case to the docket in Case No. 1:16-cv-192.

SO ORDERED this 7th day of March, 2017.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE